

## SECTION VI

### CONTRACTING PROVISIONS

6.1. If either Participant determines that Contracting is necessary to fulfill its responsibilities under the scope of work of any CANUSTEP PA, that Participant will contract in accordance with its respective national laws, regulations and procedures.

6.2. When one Participant individually contracts to carry out a task under a PA, it will be solely responsible for its own Contracting, and the other Participant will not be subject to any liability arising from such Contracts without its written consent.

6.3. The Participants may also determine that one Participant's Contracting Agency should enter into a Contract to fulfill their joint PA responsibilities or the PA responsibilities of the non-contracting Participant. That Contracting Agency will contract for both Participants in accordance with its national laws, regulations, and procedures. If necessary to meet the requirements of a PA, the U.S. DoD Contracting Officer or the CA DND Contracting Agency will seek deviations from national regulations and procedures wherever possible. Sources from both Participants' industries will be allowed to compete on an equal basis for such Contracts. The U.S. DoD Contracting Officer or the CA DND Contracting Agency will be the exclusive source for providing contractual direction and instructions to Contractors for Contracts awarded by that Participant.

6.4. For all Contracting activities performed by either Participant, the POs will, upon request, be provided a copy of all statements of work prior to the development of solicitations to ensure that they are consistent with the provisions of this MOU and the applicable PA.

6.5. For all Contracting activities performed by either Participant, each Participant's Contracting Agency will negotiate to obtain the rights to use and disclose Project Information required by Section VIII (Disclosure and Use of Project Information). Each Participant's Contracting Agency will insert into its prospective Contracts (and require its Contractors to insert in subcontracts) suitable provisions to satisfy the requirements of this MOU and the specific PA, including Section VIII (Disclosure and Use of Project Information), Section IX (Controlled Unclassified Information), Section XI (Security), and Section XII (Third Party Sales and Transfers). During the Contracting process, each Participant's Contracting Officer will advise prospective Contractors of their obligation to notify the Contracting Agency immediately if they are subject to any license or agreement that will restrict that Participant's freedom to disclose Project Information or permit its use. The Contracting Officer will also advise prospective Contractors to employ their best efforts not to enter into any new agreement or arrangement that will result in such restrictions.

6.6. In the event a Participant's Contracting Agency is unable to secure adequate rights to use and disclose Project Information as required by Section VIII (Disclosure and Use of Project Information), or is notified by Contractors or prospective Contractors of any restrictions on the disclosure and use of Project Information, that Participant's PO will notify the other Participant's PO of the restriction(s).

6.7. Each Participant's PO will promptly advise the other Participant's PO of any cost growth, schedule delay, or performance problems of any Contractor for which its Contracting Agency is responsible.

6.8. No requirement will be imposed by either Participant for worksharing or other industrial or commercial compensation in connection with this MOU that is not in accordance with this MOU.

## SECTION VII

### PROJECT EQUIPMENT TRANSFERS

7.1. For the purpose of carrying out a CANUSTEP PA, each Participant may transfer, without charge to the other Participant, such Project Equipment identified as being necessary in the CANUSTEP PA. The CANUSTEP PA will provide specific details of any transfer of Project Equipment. Project Equipment identified at the time of CANUSTEP PA signature will be detailed in the RUTF PA as set out in Annex A (Model RUTF PA) and the CTE PA as set out in Annex B (Model CTE PA). Project Equipment which cannot be identified at the time of PA signature will be documented, when identified, in a list to be developed and maintained by the POs in the format at Annexes A and B, Appendix 2, Inventory of Project Equipment transfers. Approval for all PETs will be in accordance with national procedures.

7.2. For PETs not documented in a CANUSTEP PA, each Participant may transfer, without charge to the other Participant, Project Equipment, to be documented using the model at Annex C, Project Equipment transfer (PET) Form. Approval for all PETs will be in accordance with national procedures.

7.3. The CANUSTEP PA PO will maintain a list of all Project Equipment transferred pursuant to a CTE PA.

7.4. Project Equipment transferred will be used by the receiving Participant only for the purposes specified in the CANUSTEP PA or PET Form. Project Equipment will remain the property of the providing Participant. In addition, the receiving Participant will maintain the Project Equipment in good order, repair, and operable condition. Unless the providing Participant has consented that the transferred Project Equipment may be expended or otherwise consumed without reimbursement to the providing Participant, the receiving Participant will return the Project Equipment to the providing Participant in as good condition as received, reasonable wear and tear excepted, or return the Project Equipment and pay the cost to restore the Project Equipment to such condition. If the Project Equipment is damaged beyond economical repair, the receiving Participant will return the Project Equipment to the providing Participant (unless otherwise specified in writing by the providing Participant) and pay the replacement value as computed pursuant to the providing Participant's national laws, regulations, and procedures. If the Project Equipment is lost or stolen, the receiving Participant will issue a certificate of loss to the providing Participant and pay the replacement value as computed pursuant to the providing Participant's national laws, regulations, and procedures. When appropriate, the providing and receiving Participants may specify that in no case will any payment respecting damage or loss exceed the amount indicated in the applicable CANUSTEP PA or PET Form.

7.5. The providing Participant will make every effort to ensure that the Project Equipment is furnished in a serviceable and usable condition according to its intended purpose. However, the providing Participant makes no warranty or guarantee of fitness of the Project Equipment for a particular purpose or use, and makes no commitment to alter, improve, or adapt the Project Equipment, or any part thereof.

7.6. The providing Participant will transfer the Project Equipment for the approved period, unless extended by written amendment, provided that the duration will not exceed the effective period of the CANUSTEP PA or PET Form.

7.7. The providing Participant, at its expense, will deliver the Project Equipment to the receiving Participant at the location mutually approved. Responsibility for Project Equipment will pass from the providing Participant to the receiving Participant at time of receipt. Any further transportation will be consented to and specified in the TEP PA or PET Form.

7.8. The providing Participant will furnish the receiving Participant such information as is necessary to enable the Project Equipment to be used.

7.9. The receiving Participant will inspect and inventory the Project Equipment upon receipt. The receiving Participant will also inspect and inventory the Project Equipment prior to its return (unless the Project Equipment is to be expended or consumed).

7.10. Upon expiration or termination of the transfer period specified in the CANUSTEP PA or the PET Form (taking into account any extension), the receiving Participant will return the Project Equipment, at its expense, to the providing Participant at the location mutually approved. Any further transportation is the responsibility of the providing Participant.

7.11. The receiving Participant will provide written notice of consumption or expenditure of Project Equipment approved for such consumption or expenditure. In the event the intended consumption or expenditure does not occur, the receiving Participant will, unless otherwise determined by the providing Participant, return the Project Equipment, at its expense, to the providing Participant to the location mutually approved. Any further transportation is the responsibility of the providing Participant.

7.12. The Participants will ensure, by all reasonable means, the protection of intellectual property rights in Project Equipment.

7.13. Any Project Equipment that is jointly acquired on behalf of the Participants for use under any CANUSTEP PA will be disposed of as mutually approved by the Participants.

7.14. Disposal of jointly acquired Project Equipment may include a transfer of the interest of one of the Participants in such Project Equipment to the other Participant, or the sale of such Project Equipment to a Third Party in accordance with Section XII (Third Party Sales and Transfers). The Participants will share the consideration from jointly acquired Project Equipment transferred or sold to a Third Party in the same ratio as costs are shared.

## SECTION VIII

### DISCLOSURE AND USE OF PROJECT INFORMATION

#### 8.1. General

Both Participants recognize that successful cooperation depends on full and prompt exchange of information necessary for carrying out each CANUSTEP Activity. The Participants intend to acquire sufficient Project Information and rights to use such information to promote the objectives of this MOU. The nature and amount of Project Information to be acquired will be in accordance with Section II (Objectives), Section III (Scope of Work), Section VI (Contracting Provisions) and the PAs and PET Forms under this MOU. Subject to the rights both Participants are accorded under this MOU, title to Project Foreground Information generated by a Participant or its contractor will reside within that Participant and/or its contractors, in accordance with that Participant's national laws, regulations, and policies.

8.2. All information relating to CANUSTEP and provided by one Participant to the other Participant prior to entry into effect of this MOU will be treated as information exchanged under paragraph 3.2 of this MOU.

#### Information Exchange and Working Groups

8.3. The disclosure and use provisions which govern exchange of information and WGs authorized in Section III (Scope of Work), paragraphs 3.2.1 and 3.2.2 are as follows:

8.3.1. Disclosure: At its discretion, the furnishing Participant may disclose information to the other Participant. Prior written permission from the furnishing Participant will be required for further disclosure of the information by the receiving Participant to any other entity, for example, a Contractor. Such permission will not be required in the case of further disclosure to the receiving Participant's Contractor support personnel, who are under a legally binding non-disclosure agreement.

8.3.2. Use: Use of information will be for information and evaluation purposes only. Written permission from the furnishing Participant will be required for any other use.

#### RUTF PAs

8.4. Unless the Participants concur otherwise in writing, the following provisions will apply to RUTF PAs:

8.4.1. The customer Participant's use of information will be for Defense Purposes only. Written permission from the performing Participant will be required for any other use.

8.4.2. The performing Participant's use of information will be for information and evaluation purposes only. Written permission from the customer Participant will be required for any other use.

#### Other CANUSTEP Activities

8.5. The disclosure and use provisions which govern other CANUSTEP Activities authorized in Section III (Scope of Work), paragraphs 3.2.3 and 3.2.4 are set out below.

8.6. Government Project Foreground Information:

8.6.1. Disclosure: Project Foreground Information generated by a Participant's military or civilian employees will be disclosed without charge to both Participants.

8.6.2. Use: Each Participant may further disclose, use or have used on its behalf government Project Foreground Information without charge only for its Defense Purposes. The Participant providing government Project Foreground Information will also retain its rights therein. If a Participant intends to use any government Project Foreground Information in a sale or other transfer to a Third Party, however, the provisions of Section XII (Third Party Sales and Transfers) of this MOU will apply.

8.7. Contractor Project Foreground Information:

8.7.1. Disclosure: Contractor Project Foreground Information generated and delivered by Contractors will be disclosed without charge to the Participants.

8.7.2. Use: Each Participant may further disclose, use or have used on its behalf, without charge, only for its Defense Purposes, all Contractor Project Foreground Information. The Participant whose Contractors generate and deliver Contractor Project Foreground Information will also retain rights of use therein in accordance with the applicable Contract(s). If a Participant intends to use any Contractor Project Foreground Information in a sale or other transfer to a Third Party, the provisions of Section XII (Third Party Sales and Transfers) of this MOU will also apply.

8.8. Government Project Background Information:

8.8.1. Disclosure: Each Participant, upon request, will disclose to the other Participant any relevant government Project Background Information generated by its military or civilian employees, provided that:

8.8.1.1. such government Project Background Information is necessary to or useful in the CANUSTEP Activity, with the disclosing Participant determining whether it is "necessary to" or "useful in" the CANUSTEP Activity;

8.8.1.2. such government Project Background Information may be made available without incurring liability to holders of proprietary rights;

8.8.1.3. disclosure is consistent with national disclosure policies and regulations of the disclosing Participant.

8.8.2. Use: Government Project Background Information disclosed by one Participant to the other Participant may be used without charge by or for the receiving Participant only for conducting the CANUSTEP Activity for which it was provided. However, subject to proprietary rights held by other than the Participants, government Project

Background Information may be used for Defense Purposes by the receiving Participant without charge when the use of such government Project Background Information is necessary for the use of government Project Foreground Information. The furnishing Participant (after consultation with the receiving Participant) will determine whether such use of government Project Background Information is necessary. The disclosing Participant will retain all its rights with respect to such government Project Background Information.

8.9. Contractor Project Background Information:

8.9.1. Disclosure: Any relevant Contractor Project Background Information (including information subject to proprietary rights) which is or has been generated outside of the CANUSTEP Activity and delivered by Contractors of one of the Participants will be made available to the other Participant provided the following provisions are met:

8.9.1.1. such Contractor Project Background Information is necessary to or useful in the CANUSTEP Activity, with the disclosing Participant determining whether it is "necessary to" or "useful in" the CANUSTEP Activity;

8.9.1.2. such Contractor Project Background Information may be made available without incurring liability to holders of proprietary rights;

8.9.1.3. disclosure is consistent with national disclosure policies and regulations of the disclosing Participant.

8.9.2. Use: Contractor Project Background Information disclosed by one Participant may be used without charge by or for the other Participant only to conduct the CANUSTEP Activity for which it was provided. Any other use will be in accordance with the terms arranged with the Contractor, and may be the subject of further restrictions by holders of proprietary rights.

8.10. Jointly Generated Foreground Information:

8.10.1. Disclosure: All Jointly Generated Foreground Information generated under a CANUSTEP Activity will be disclosed to both Participants promptly and without charge.

8.10.2. Use: Each Participant generating or receiving Jointly Generated Foreground Information may use or have used such information without charge only for its Defense Purposes unless mutually decided otherwise in writing.

8.10.3. Information generated by WGs will be treated as Jointly Generated Foreground Information unless otherwise decided.

8.11. Alternative Uses of Project Information:

8.11.1. The prior written consent of each Participant's government will be required for the use of any Project Foreground Information for purposes other than those provided for in this MOU or any of its PAs.

8.11.2. Any Project Background Information provided by one Participant will be used by the other Participant only for the purposes set forth in this MOU, unless otherwise consented to in writing by the providing Participant's government.

8.12. Project Information Subject to Proprietary Rights:

8.12.1. All unclassified Project Information subject to proprietary rights will be identified, marked and handled as Controlled Unclassified Information. All classified Project Information subject to proprietary rights will be so identified and marked.

8.12.2. The provisions of the NATO Agreement on the communication of Technical Information for Defence Purposes of 19 October 1970, and its Implementing Procedures of 1 January 1971, will apply to this MOU.

Project Inventions and Patents

8.13. Reporting of Project Inventions. A Participant will disclose to the other Participant any Project Invention made by its respective employees or Contractors as promptly as possible after the Project Invention is made. The disclosure will be in the form of a written report listing the inventor(s) and describing the manner and process of making and using the Project Invention in sufficient technical detail as to enable any person skilled in the art to which it pertains to make and use the Project Invention.

8.14. Title to Project Inventions. Each Participant will retain title to each Project Invention made by its respective employees:

8.14.1. The Participant retaining title to such Project Inventions will grant to the other Participant at least a royalty-free, nonexclusive, irrevocable license to practice or have practiced world-wide for Defense Purposes by or on behalf of the other Participant such Project Inventions covered by any resulting Patents.

8.14.2. The Participant retaining title to such Project Inventions may, in its discretion, grant rights in such Project Inventions covered by any resulting Patents to the other Participant, or any other person or entity, upon such terms and conditions as it deems appropriate.

8.15. Title to Joint Project Inventions. Title to Project Inventions made jointly by employees of the Participants will be held jointly by the Participants unless otherwise determined:

8.15.1. The Participants may grant rights in such joint Project Inventions to any other person or entity, upon such terms and conditions as they unanimously deem appropriate.

8.16. Contractor Generated Project Inventions. Title to Project Inventions made by Contractors will be held in accordance with the terms of the respective Contract. Where any Contract fails to specify how title in any Patent will be held, title will be determined in accordance with the national laws governing Project Inventions by Contractors of the Participant who awarded the Contract:



8.16.1. Contractor Generated Project Inventions in Unique National Variants. Where Project Inventions are made in connection with a unique national variant, paid for fully by or on behalf of only one Participant, regardless of who is the Contracting Agency, the Contracting Agency must ensure that the Contract grants to the Participant funding the national variant any rights as directed by that Participant.

8.16.2. Contractor Generated Project Inventions of Participants. Where a Contract is awarded by a Participant on its own behalf or by a Contracting Agency on behalf of one or both of the Participants, the Contract so awarded must ensure that the owner of any Project Invention made by a Contractor will grant to the Participant(s) at least a royalty-free, nonexclusive, irrevocable license to practice or have practiced worldwide for Defense Purposes by or on behalf of the Participant(s) the Project Invention covered by any resulting Patents.

8.17. Patent Applications. A Participant having the right to hold title to a Project Invention may elect to file Patent applications or otherwise seek Patent protection thereon provided it so advises the other Participant of its intention to do so and the countries in which it intends to seek Patent protection within 60 days from the date it reports the Project Invention to the other Participant:

8.17.1. If a Participant initially elects to seek Patent protection, but later decides not to continue seeking Patent protection, or if a Participant decides not to share the costs of seeking Patent protection of a joint Project Invention, then the other Participant may elect (but is not required) to seek Patent protection on such a Project Invention in those countries in which the Participant has not elected to seek Patent protection.

8.17.2. If the other Participant elects to seek Patent protection in those countries, the Participant initially having the right to seek Patent protection on the Project Invention agrees to consent to such filing by the other Participant and the other Participant will equitably share any royalties from the licensing of any resulting Patents taking into consideration the expenses incurred by each Participant in securing Patent protection.

8.17.3. A Participant will not file or cause to be filed any Patent application outside the United States of America or Canada, or publish or cause to be published any such application or Patent thereon anywhere, without the other Participant's prior written consent where the application contains either:

8.17.3.1. the other Participant's Project Background Information, or;

8.17.3.2. Jointly Generated Foreground Information.

8.17.4. Patent applications on Project Inventions which contain Classified Information or Material will be protected and safeguarded in accordance with the requirements contained in the NATO Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defense and for Which Applications for Patents Have Been Made, signed on 21 September 1960, and its Implementing Procedures.

8.18. Patent Prosecution:

8.18.1. The expenses attendant to seeking Patent protection as specified above will be borne by the Participant seeking Patent protection. Where both Participants jointly seek Patent protection, the expenses attendant to seeking the Patent protection will be shared equally between the Participants, unless mutually deemed otherwise.

8.18.2. Each Participant will provide the other with copies of Patent applications it files in Patent offices, along with a power to inspect and make copies of all documents retained in the files of the applicable Patent office that are available for inspection and copying by a Participant seeking Patent protection.

8.18.3. A Participant seeking Patent protection will have the right to control the Patent prosecution where it is solely funding the expenses attendant to seeking the Patent protection. Where both Participants are seeking Patent protection, they will jointly control the Patent prosecution if each is funding a portion of the expenses attendant to seeking the Patent protection. Both Participants will cooperate with each other in seeking Patent protection.

8.19. Maintenance Fees. The fees payable to a Patent office in order to maintain the Patent on a Project Invention will be paid by the Participant having title to the Patent or will be shared equally if title is held jointly by both Participants. If a Participant decides not to pay the required maintenance fees, it will immediately notify the other Participant, who may pay the maintenance fees if it desires to maintain the enforcement of the Patent. In this case, the Participant who has decided not to pay the maintenance fees will assign its rights to the other Participant.

8.20. Each Participant will notify the other of any Patent infringement claim and, insofar as possible, each Participant will extend to the other Participant any assistance in defending such claims arising in the course of work performed under the CANUSTEP PA. The Participants will, in accordance with their national laws and practices, give their authorization and consent for all use and manufacture in the course of work performed under the CANUSTEP PA of any invention covered by a Patent issued by their respective countries. Each Participant is responsible for handling all Patent infringement claims made in its territory and to inform the other Participant of such claims and to consult with the other Participant during the handling and prior to any settlement of such claims.

## SECTION IX

### CONTROLLED UNCLASSIFIED INFORMATION

9.1 Except as otherwise provided in this MOU or as authorized in writing by the originating Participant, Controlled Unclassified Information provided or generated pursuant to this MOU will be controlled as follows:

9.1.1 such information will be used only for the purposes authorized for use of Project Information as specified in Section VIII (Disclosure and Use of Project Information);

9.1.2 access to such information will be limited to personnel whose access is necessary for the permitted use under subparagraph 9.1.1, and will be subject to the provisions of Section XII (Third Party Sales and Transfers);

9.1.3 each Participant will take all lawful steps, which may include national classification, available to it to keep such information free from further disclosure (including requests under any legislative provisions), except as provided in subparagraph 9.1.2, unless the originating Participant consents to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the information may have to be further disclosed under any legislative provision, immediate notification will be given to the originating Participant.

9.2 To assist in providing the appropriate controls, the originating Participant will ensure that Controlled Unclassified Information is appropriately marked. The Participants will decide, in advance and in writing, on the markings to be placed on the Controlled Unclassified Information. The appropriate markings will be defined in the Project Security Instruction.

9.3 Controlled Unclassified Information provided or generated pursuant to this MOU will be handled in a manner that ensures control as provided for in paragraph 9.1.

9.4 Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Participants will ensure the Contractors are legally bound to control such information in accordance with the provisions of this Section.

## SECTION X

### VISITS TO ESTABLISHMENTS

10.1. Each Participant will permit visits to its government establishments, agencies and laboratories, and Contractor industrial facilities by employees of the other Participant or by employees of the other Participant's Contractor(s), provided that the visit is authorized by both Participants and the employees have any necessary and appropriate security clearances and a need-to-know.

10.2. All visiting personnel will be required to comply with security regulations of the Host Participant. Any information disclosed or made available to visitors will be treated as if supplied to the Participant sponsoring the visiting personnel, and will be subject to the provisions of this MOU.

10.3. Requests for visits by personnel of one Participant to a facility of the other Participant will be coordinated through official channels, and will conform to the established visit procedures of the Host Participant. Requests for visits will bear the name of this MOU and the appropriate PA.

10.4. Lists of personnel of each Participant required to visit, on a continuing basis, facilities of the other Participant will be submitted through official channels in accordance with recurring international visit procedures.

## SECTION XI

### SECURITY

11.1. All Classified Information provided or generated pursuant to this MOU will be stored, handled, transmitted, and safeguarded in accordance with the General Security Agreement between Canada and the United States of America, dated 30 January 1962, and including the Industrial Security Annex thereto, of 8 February 1985.

11.2. Classified Information will be transferred only through official government-to-government channels or through channels approved by the Designated Security Authorities (DSAs) of the Participants. Such Classified Information will bear the level of classification, denote the country of origin, the conditions of release, and the fact that the information relates to this MOU and the applicable PA.

11.3. Each Participant will take all lawful steps available to it to ensure that Classified Information provided or generated pursuant to this MOU and any of its PAs is protected from further disclosure, except as permitted by paragraph 11.8, unless the other Participant consents to such disclosure. Accordingly, each Participant will ensure that:

11.3.1. the recipient will not release the Classified Information to any government, national, organization, or other entity of a Third Party without the prior written consent of the originating Participant in accordance with the procedures set forth in Section XII (Third Party Sales and Transfers);

11.3.2. the recipient will not use the Classified Information for other than the purposes provided for in this MOU;

11.3.3. the recipient will comply with any distribution and access restrictions on information that is provided under this MOU.

11.4. The Participants will investigate all cases in which it is known or where there are grounds for suspecting that Classified Information provided or generated pursuant to this MOU has been lost or disclosed to unauthorized persons or other entities. Each Participant also will promptly and fully inform the other Participants of the details of any such occurrences, and of the final results of the investigation and of the corrective action taken to preclude recurrences.

11.5. When a CTE PA contains provisions for the exchange of Classified Information, the POs will prepare a Project Security Instruction (PSI) and a Classification Guide (CG) for the PA. The PSI and the CG will describe the methods by which Project Information will be classified, marked, used, transmitted, and safeguarded. The PSI and CG will be developed by the PO within three months after the CTE PA enters into effect. They will be reviewed and forwarded to the Participants' Designated Security Authorities (DSAs) for approval and will be applicable to all government and Contractor personnel participating in the project. The CG will be subject to regular review and revision with the aim of downgrading the classification whenever this is appropriate. The PSI and the CG will be approved by the appropriate DSA prior to the transfer of any Classified Information or Controlled Unclassified Information.

11.6. The DSA of the Participant in which a classified Contract is awarded will assume responsibility for administering within its territory security measures for the protection of the Classified Information, in accordance with its laws and regulations. Prior to the release to a Contractor, prospective Contractor, or subcontractor of any Classified Information provided or generated under this MOU, the DSAs will:

11.6.1. ensure that such Contractor, prospective Contractor or subcontractor and their facility(ies) have the capability to protect the Classified Information adequately;

11.6.2. grant a security clearance to the facility(ies), if appropriate;

11.6.3. grant a security clearance for all personnel whose duties require access to Classified Information, if appropriate;

11.6.4. ensure that all persons having access to the Classified Information are informed of their responsibilities to protect the Classified Information in accordance with national security laws and regulations, and provisions of this MOU;

11.6.5. carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected;

11.6.6. ensure that access to the Classified Information is limited to those persons who have a need-to-know for purposes of the MOU and any of its PAs.

11.7. Contractors, prospective Contractors, or subcontractors which are determined by DSAs to be under financial, administrative, policy or management control of nationals or entities of a Third Party, may participate in a Contract or subcontract requiring access to Classified Information provided or generated pursuant to this MOU or any of its PAs only when enforceable measures are in effect to ensure that nationals or other entities of a Third Party will not have access to Classified Information. If enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the other Participant will be consulted for approval prior to permitting such access.

11.8. For any facility wherein Classified Information is to be used, the responsible Participant or Contractor will approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the information pertaining to this MOU and any of its PAs. These officials will be responsible for limiting access to Classified Information involved in this MOU and any of its PAs to those persons who have been properly approved for access and have a need-to-know.

11.9. Each Participant will ensure that access to the Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the Classified Information in order to participate in this MOU or any of its PAs.

11.10. Information provided or generated pursuant to this MOU may be classified as high as SECRET. The existence of this MOU is UNCLASSIFIED and contents are UNCLASSIFIED. The classification of the existence of any PA and its contents will be stated in that PA.

## SECTION XII

### THIRD PARTY SALES AND TRANSFERS

12.1. Except to the extent permitted in paragraph 12.2, the Participants will not sell, transfer title to, disclose, or transfer possession of Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) or jointly acquired or produced Project Equipment to any Third Party without the prior written consent of the other Participant's government. Furthermore, neither Participant will permit any such sale, disclosure, or transfer, including by the owner of the item, without the prior written consent of the other Participant. Such consent will not be given unless the government of the intended recipient consents in writing with the Participants that it will:

12.1.1. not retransfer, or permit the further retransfer of, any equipment or information provided;

12.1.2. use, or permit the use of, the equipment or information provided only for the purposes specified by the Participants.

12.2. Each Participant will retain the right to sell, transfer title to, disclose, or transfer possession of Project Foreground Information that:

12.2.1. is generated solely by either that Participant or that Participant's Contractors in the performance of that Participant's work allocation under Section III (Scope of Work);

12.2.2. does not include any Project Foreground Information or Project Background Information of the other Participant, and whose generation, test, or evaluation has not relied on the use of Project Equipment of the other Participant.

12.3. In the event questions arise as to whether the Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) that a Participant intends to sell, transfer title to, disclose, or transfer possession of to a Third Party is within the scope of paragraph 12.2, the matter will be brought to the immediate attention of the other Participant's MA. The Participants will resolve the matter prior to any sale or other transfer of such Project Foreground Information (or any item produced either wholly or in part from the Project Foreground Information) to a Third Party.

12.4. A Participant will not sell, transfer title to, disclose, or transfer possession of Project Equipment or Project Background Information provided by the other Participant to any Third Party without the prior written consent of the Participant which provided such equipment or information. The providing Participant will be solely responsible for authorizing such transfers and, as applicable, specifying the method and provisions for implementing such transfers.

## SECTION XIII

### LIABILITY AND CLAIMS

13.1. Claims arising under this MOU will be dealt with under paragraph 1a. of the Agreement between the Government of the United States of America and the Government of Canada of 19 August 1994 Concerning Certain Mutual Defense Commitments. In respect of paragraph 1.b)(ii) of the Chapeau Agreement, each Participant will bear its own costs in respect of claims by third parties for injury or death to persons or damage to property arising from CANUSTEP Activities.

13.2. Claims arising under or related to any Contract awarded pursuant to Section VI (Contracting Provisions) will be resolved in accordance with the provisions of the Contract.

13.3. Employees and agents of Contractors will not be considered to be civilian personnel employed by a Participant for the purpose of paragraph 13.1.